

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Ted D. Ellis and Teresa Ellis,

Plaintiffs,

v.

Cody C. Kirkman, Individually, *et al.*,

Defendants.

C/A: 9:19-cv-2163-RMG

ORDER AND OPINION

Before the Court is the Report & Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 44) recommending that: (1) Defendants’ motion to stay (Dkt. No. 33) be granted; (2) that Plaintiffs’ Motion to Exclude Defendants’ Expert (Dkt. No. 27) be denied without prejudice and with leave to refile after the stay; (3) that Plaintiffs’ Partial Motion for Summary Judgment (Dkt. No. 29) be denied without prejudice and with leave to refile after the stay; (4) and that Defendants’ Motion for Extension of Time to Respond to Plaintiffs’ Partial Motion for Summary Judgment (Dkt. No. 40) be denied as moot. For the reasons set forth below, the Court adopts the R & R as the order of the Court.

I. Background

This action arises from a traffic stop conducted by Defendants Cody Kirkman and Lindsey Gibson. Plaintiff alleges that during this traffic stop Defendants, *inter alia*, violated his civil rights.

On September 30, 2020, Defendants filed a motion to stay all activity in this case for a period of 90 days due to “an on-going and parallel criminal investigation into the events which form the basis of the causes of action put forth by Plaintiffs in their Complaint.” (Dkt. No. 34 at 1.).

On October 16, 2020, the Magistrate Judge issued an R & R recommending that: (1) Defendants’ motion to stay (Dkt. No. 33) be granted; (2) that Plaintiffs’ Motion to Exclude

Defendants' Expert (Dkt. No. 27) be denied without prejudice and with leave to refile after the stay; (3) that Plaintiffs' Partial Motion for Summary Judgment (Dkt. No. 29) be denied without prejudice and with leave to refile after the stay; (4) and that Defendants' Motion for Extension of Time to Respond to Plaintiffs' Partial Motion for Summary Judgment (Dkt. No. 40) be denied as moot.

II. Legal Standard

The Magistrate Judge makes a recommendation to this Court that has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where there are specific objections to the R & R, the Court “makes a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* Where a plaintiff has not objected, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee's note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection ... we do not believe that it requires any explanation.”). No party filed objections to the R & R. The Court therefore reviews the R & R for clear error.

III. Discussion

The Magistrate Judge carefully addressed the issues, accurately stated all pertinent law, and correctly concluded that Defendants' motion for a stay be granted. The Magistrate Judge correctly concluded that the civil and criminal proceedings involving Defendants Kirkman and Gibson involved the identical issues. The Magistrate Judge then correctly applied *Reeves v.*

Town of Cottageville, No. 2:12-CV-02765-DCN, 2013 WL 1566635, at *2 (D.S.C. Apr. 12, 2013) and rightly concluded that a stay was necessary considering the factors articulated therein.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 44) as the order of the Court. The Court therefore: (1) **GRANTS** Defendants' motion to stay (Dkt. No. 33); (2) **DENIES** Plaintiffs' Motion to Exclude Defendants' Expert (Dkt. No. 27) **WITHOUT PREJUDICE** and with leave to refile after the stay; (3) **DENIES** Plaintiffs' Partial Motion for Summary Judgment (Dkt. No. 29) **WITHOUT PREJUDICE** and with leave to refile after the stay; (4) and **DENIES** Defendants' Motion for Extension of Time to Respond to Plaintiffs' Partial Motion for Summary Judgment (Dkt. No. 40) as moot.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Court Judge

November 10, 2020
Charleston, South Carolina